



**INDIANA COURT OF APPEALS  
ORAL ARGUMENT AT A GLANCE  
FAIRFIELD HIGH SCHOOL**

***Tyhesha Lemon v. State of Indiana***

**Appeal from:**  
Marion Superior Court  
The Honorable Israel Cruz,  
Judge

**Oral Argument:**  
Thursday, May 3, 2007  
1:00—2:00 p.m.  
30 minutes each side

**CRIMINAL LAW**

Did the State present sufficient evidence to convict Tyhesha Lemon of battery resulting from an altercation with a private security guard attempting to make a citizen's arrest?

**CASE SYNOPSIS**

**Facts and Procedural History**

On the afternoon of February 13, 2006, Lemon, accompanied by her son and a friend, went to the parking lot of Handleman Company in Marion County to place a Valentine's Day card on the windshield of a Handleman employee, her former boyfriend Ronald Walls. When Walls saw Lemon and her friend in the parking lot while returning from lunch, Lemon spoke to Walls, threatening to vandalize his vehicle. Walls proceeded to the Handleman building and spoke to Handleman's Chief Security Officer, Jeffrey Mishler, about the situation. Mishler is a private security guard and is not a law enforcement officer. Walls and Mish-

ler walked outside to the parking lot and found Lemon kneeling down near the rear tire on the driver's side of Walls's vehicle.

After Mishler observed Lemon in the Handleman parking lot, he issued a verbal challenge to Lemon and tried to determine what she was doing. In response to Mishler's challenge, Lemon stood up and started to back away from the vehicle with her hands in her pockets. Lemon did not vandalize or otherwise damage the vehicle. Mishler told Lemon that she was trespassing. Lemon continued to back away and became argumentative, but did not verbally refuse to leave.

When Lemon did not leave immediately, Mishler approached her and at-

*Tyhesha Lemon v. State of Indiana***CASE SYNOPSIS**

tempted to gain physical control over her by putting her in a transport hold. He told her that she was being arrested for trespass and took hold of Lemon in order to handcuff her. Lemon struggled in an attempt to resist being handcuffed. Mishler attempted to place Lemon over the trunk of a car, but had to place her on the ground to gain physical control. During the struggle, a cut Mishler had received on his hand a few days earlier reopened and began to bleed. Testimony at trial indicated that the cut on Mishler's hand may have been opened during the struggle by one of Lemon's fingernails or by the handcuffs scratching his hand.

After Lemon was handcuffed, Mishler took her inside the Handleman building to the security office. Lemon continued to struggle on the way to the office. Once inside the security office, Mishler tried to place Lemon over a desk in an attempt to control her, but Lemon continued to struggle and was placed on the floor. While being forced to the floor by Mishler, Lemon sustained a cut lip.

Officers from the Marion County Sheriff's Department arrived at the scene and found Lemon lying on the floor inside the security booth with her hands handcuffed behind her back. According to the officers, Lemon cooperated with them as they arrested her for battery, disorderly conduct, and vandalism; they did not arrest Lemon for trespass.

The State charged Lemon with Class A misdemeanor battery, Class A misdemeanor criminal mischief, and Class B misdemeanor disorderly conduct. The State dismissed the criminal mischief charge prior to trial. During a

bench trial on March 9, 2006, and following the presentation of the State's evidence, the trial court found Lemon not guilty of disorderly conduct. Lemon also moved to dismiss the battery charge, arguing that Mishler did not have the authority to arrest Lemon as he was not a law enforcement officer and Lemon did not commit a felony in his presence. The trial court took the motion under advisement.

On April 6, 2006, the trial court determined that Lemon committed a breach of the peace, thus providing Mishler with the right to hold Lemon until officers arrived. Upon that determination the trial court found Lemon guilty of Class A misdemeanor battery. Lemon was then sentenced to sixty days, with fifty-two days suspended.

**Parties' Arguments**

To convict Lemon of Class A misdemeanor battery, the State was required to prove that Lemon "knowingly or intentionally touch[ed] another person in a rude, insolent, or angry manner" and that the touching resulted "in bodily injury to any other person." Ind. Code § 35-42-2-1(a)(1)(A) (2004).

Lemon contends that any injury sustained by Mishler was a result of his unlawful use of force while attempting to arrest her. Neither party disputes that Mishler's actions constituted an arrest. Both parties also admit that Mishler has no law enforcement powers above and beyond those of a normal

## Case Synopsis (*continued*)

citizen. The issue here is whether Mishler's actions constituted a *lawful* arrest.

### *Citizen's Arrest*

The State argues that Mishler made a valid citizen's arrest pursuant to Indiana Code section 35-33-1-4, which provides in pertinent part:

(a) Any person may arrest any other person if:

- (1) the other person committed a felony in his presence;
- (2) a felony has been committed and he has probable cause to believe that the other person has committed that felony; or
- (3) a misdemeanor involving a breach of peace is being committed in his presence and the arrest is necessary to prevent the continuance of the breach of peace.

(b) A person making an arrest under this section shall, as soon as practical, notify a law enforcement officer and deliver custody of the person arrested to a law enforcement officer.

Ind. Code § 35-33-1-4 (1998).

**Opinion in this case expected:**  
By the end of summer 2007

*Ms. Keim will be informed when the Court has issued an opinion in this case. Check the Court's website to read the opinion.*

**For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>**

**Or contact:**

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## TODAY'S PANEL OF JUDGES

### **Hon. Paul D. Mathias (Allen County), Presiding**

- Judge of the Court of Appeals since March 2000

**Paul D. Mathias** was appointed to the Court by Governor Frank O'Bannon in March, 2000. Judge Mathias is a fifth generation Hoosier and grew up in Fort Wayne. He graduated from Harvard University, *cum laude*, in 1976 and from Indiana University School of Law – Bloomington in 1979, where he was a member of the law school's Sherman Minton Moot Court Team and *Order of Barrister*.

Judge Mathias practiced law for six years in Fort Wayne, concentrating in construction law, personal injury and appellate practice. In 1985, he was appointed Referee of the Allen County Small Claims Court, where he

served until his appointment as Judge of the Allen Superior Court – Civil Division by Governor Evan Bayh in 1989.

Judge Mathias served as an officer of the Indiana Judges Association from 1993 to 1999 and as its president from 1997 to 1999. He received the Centennial Service Award from the Indiana State Bar Association in 1996, and a Sagamore of the Wabash Award from two governors.

Judge Mathias, who was retained on the Court of Appeals by election in 2002, is married and has two sons.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

**Today's oral argument is the 187th case the Court of Appeals has heard "on the road" since early 2000.**

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

## **TODAY'S PANEL OF JUDGES**

### **Hon. Michael P. Barnes (St. Joseph County)**

- Judge of the Court of Appeals since May 2000

**Michael P. Barnes** was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon on May 22, 2000. Judge Barnes received his B.A. from St. Ambrose College in Davenport, Iowa in 1970 and his J.D. from the University of Notre Dame Law School in 1973.

Judge Barnes was a Deputy Prosecuting Attorney and privately practiced law in South Bend from 1973 to 1978. In 1978 he was elected the St. Joseph County Prosecuting Attorney, a position he held for 20 years. During that tenure, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar

Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence Against Women (1997), Chairman of the Board of Regents, National College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations.

Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, and serves on the Board of Directors of the Friends of the St. Joseph County Juvenile Justice Center.

Judge Barnes was retained on the Court of Appeals by election in 2002. He is married and the father of two sons.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.

## **TODAY'S PANEL OF JUDGES**

### **Hon. Terry A. Crone (St. Joseph County)**

- Judge of the Court of Appeals since March 2004

**Terry A. Crone** was appointed to the Court of Appeals March 8, 2004, and currently serves as the Presiding Judge of the Third District. Judge Crone was raised in South Bend. He graduated *cum laude* from DePauw University in 1974 and from Notre Dame Law School in 1977. Judge Crone practiced law for nine years, concentrating in areas of civil practice, and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, Judge Crone was appointed Magistrate of the St. Joseph Circuit Court, where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is a past President of the St. Joseph County Bar Association and a former member of the Board of Managers of the Indiana Judges Association, the Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference.

Judge Crone is currently a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society.

Judge Crone is a frequent speaker at legal education programs and currently serves as Moderator of the Indianapolis Bar Association Bar Leader Series. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

Judge Crone, who was retained on the Court by election in 2006, is married and has three daughters.



## **ATTORNEYS FOR THE PARTIES**

### **For Appellant, Tyhesha Lemon:**

**Barbara Simmons  
Simmons Law Firm  
Oldenburg**

**Barbara Simmons** maintains a general law practice in the small village of Oldenburg, Indiana. She has served as an appellate contract attorney with the Marion County Public Defender Agency since February of 2000. Ms. Simmons' practice focuses on business/corporate law and transactions, real estate law, family law, and criminal law, including criminal appeals.

A 1990 graduate of the Indiana University School of Law, Ms. Simmons has practiced law as a sole practitioner since 1999. She obtained her B.S. degree in Business Management from Saint Mary-Of-The-Woods College and an A.S. degree in Paralegal Studies from Vincennes University.

Prior to establishing her private practice, Ms. Simmons was employed as Staff Counsel with the Indiana Association of REALTORS,® Inc. from 1995 through mid-2002 and as Deputy Commissioner for the Indiana Secretary of State's Securities Division from 1993 through early 1995. She was also employed with the corporate legal department of Hillenbrand Industries, Inc., a Fortune 300 company, from 1978 through 1992, during which she served as corporate counsel from 1990-1992.

Ms. Simmons is active in her local community where she serves as Vice-President of the Ripley County Humane Society and a founding Council Member of the Turquoise Marble Teaching Center.

### **For Appellee, State of Indiana:**

**Christopher Americanos  
Deputy Attorney General  
Indianapolis**

**Christopher Americanos** was born and raised in Marion County. He graduated from Butler University in 2002 with a B.A in Philosophy and the Indiana University School of Law — Indianapolis in 2006. He has served as a Deputy Attorney General in the Criminal Appeals Section since January 2007.

In law school, Mr. Americanos was involved in several student organizations including the Environment Law Society, Equal Justice Works, Phi Delta Phi, and the Democratic Law Society. He served as vice-president of

the Student Bar Association during his third year. For his performance in the Moot Court Competition, he was inducted into the Order of the Barristers. He was also a member of the Indiana Health Law Review.

In the summer of 2005, Mr. Americanos served as a legal intern for Region VIII of the Environmental Protection Agency, headquartered in Denver, Colorado. The following year, he was admitted as a Finalist in the federal government's Presidential Management Fellowship Program.